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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,028	07/25/2001	Hassan K. Sreenath	096429-9108	7045

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EXAMINER

PRATS, FRANCISCO CHANDLER

ART UNIT PAPER NUMBER

1651

DATE MAILED: 07/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/915,028

Applicant(s)

SREENATH, HASSAN K.

Examiner

Francisco C Prats

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1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Francisco C Prats
Primary Examiner
Art Unit: 1651

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ATTACHMENT TO ADVISORY ACTION

The after-final amendment filed June 26, 2002 (certificate of mailing of June 23, 2002), has been received. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior office action.

The after-final amendment filed June 26, 2002, will not be entered because it raises new issues for search and consideration. Specifically, the claims now require the saccharification and fermentation steps to be conducted simultaneously. Simultaneous saccharification and fermentation has not been searched or considered previously. Thus, the amendment clearly raises a new issue for search and consideration. Had the new limitation been already present in the claims, a different search would have been conducted and different prior art applied. Similarly, the new limitation requiring the sausage casings to be unwashed requires additional previously unrequired consideration vis-à-vis the prior art. Non-entry of his amendment is clearly proper at this stage of prosecution.

Regarding the information disclosure statement filed with the response of June 26, 2002, the information disclosure statement fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in

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the application file, but the information referred to therein has not been considered.

With respect to the pending grounds of rejection, all of applicant's argument has been fully considered but is not persuasive of error. While applicant urges in the response and specification at page 4, lines 8-17, that the presence of nitrate or nitrite would have been expected to inhibit microorganisms, it is again pointed out applicant has not provided any evidence to support this assertion. Moreover, in view of the fact that it was known in the art at the time of applicant's invention that lactobacilli were capable of growth in the presence of nitrates and nitrites, applicant's argument regarding the lack of reasonable expectation of success is not supported in the prior art.

It is noted that the proposed new limitation requiring the casings to be unwashed essentially means that nitrate/nitrite concentrations would be in amounts used for preservative purposes. However, it is also pointed out that lactobacilli themselves have been previously used in sausages as preservatives. Had the "unwashed" limitation been present in claims before the final rejection, such prior art could have been applied. However, in view of the non-entry of the proposed amendment, such prior art is essentially unnecessary, since the

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claims encompass nitrate/nitrite amounts small enough to not be expected to inhibit bacterial growth.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francisco C Prats whose telephone number is 703-308-3665. The examiner can normally be reached on Monday through Friday, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


Francisco C Prats
Primary Examiner
Art Unit 1651

FCP
July 9, 2003